

## **REMARKS/ARGUMENTS**

### **I. General Remarks.**

Applicants respectfully request reconsideration of the application in view of the remarks contained herein.

### **II. Disposition of the Claims.**

At the time of the Office Action, claims 1-42 were pending. Claims 39-42 are rejected. Claims 1-38 are allowed. Applicants gratefully acknowledge Examiner's designation of claims 1-38 as allowable subject matter.

### **III. Remarks Regarding the Rejection of Claims 39-42 Under 35 U.S.C. § 102(b).**

Claims 39-42 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,645,375 issued to Stephens (hereinafter "*Stephens*"). With respect to this rejection, the Office Action alleges that *Stephens* discloses:

a method that includes a method of preparing a cement composition comprising the steps of: mixing a first cementitious component (fly ash, cement slurry) and an aqueous-based fluid (aqueous foam solution) to form an intermediate cement composition in a first mixer 134; and mixing the intermediate cement composition 152 and a second cementitious component 155 (sodium silicate) in a second mixer 122 to form the cement composition.

(Office Action at 2.) Applicants respectfully disagree because *Stephens* does not teach or suggest each and every limitation of claims 39-42 as required to anticipate the claims under 35 U.S.C. § 102(b). MPEP § 2131.

In particular, independent claim 39 is not anticipated by *Stephens* because *Stephens* does not disclose "mixing a *first cementitious component* and an aqueous-based fluid to form an intermediate cement composition in a first mixer; and mixing the intermediate cement

composition and a *second cementitious component* in a second mixer to form the cement composition.” Rather than disclosing this recitation, *Stephens* provides a “method comprising the steps of: (a) providing a cement slurry solution; (b) mixing a sodium silicate solution with the cement slurry solution in an amount sufficient to accelerate hardening of the resulting cementitious mixture to a predetermined initial set time.” *Stephens*, col. 2, ll. 55-59. However, contrary to the remarks made in the Office Action, the sodium silicate solution is not a cementitious component. The sodium silicate solution “serves to control the rate at which the mixture hardens or sets up.” *Stephens*, col. 7, ll. 19-20. Thus, the sodium silicate solution of *Stephens* is *not* a cementitious component, but rather an additive to the cement composition which controls curing properties of the composition. Accordingly, *Stephens* does not disclose mixing a *first cementitious component* and an aqueous-based fluid to form an intermediate cement composition in a first mixer; and mixing the intermediate cement composition and a *second cementitious component* in a second mixer to form the cement composition, as recited in independent claim 39.

Therefore, Applicants respectfully assert that independent claim 39 is not anticipated by *Stephens*. Accordingly, for at least these reasons, Applicants respectfully request removal of the 35 U.S.C. § 102(b) rejection as to independent claim 39, and correspondingly, as to dependent claims 40-42.

#### **IV. No Waiver**

All of Applicants’ arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to

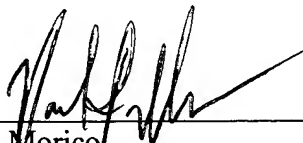
additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinction discussed by Applicants is sufficient to overcome the anticipation rejections.

### SUMMARY

In light of the above remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicants believe that there are no fees due in association with the filing of this Response. However, should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition Therefor, and direct that any additional fees be charged to Baker Botts L.L.P. Deposit Account No. 02-0383, Order Number 063718.0538.

Respectfully submitted,

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